

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	
Everald Oliver Brown)	File No. EB-02-TP-575
Orlando, Florida)	NAL/Acct. No. 200332700018
)	FRN: 0007-9511-06

MEMORANDUM OPINION AND ORDER

Adopted: January 24, 2007

Released: January 26, 2007

By the Assistant Chief, Enforcement Bureau:

I. INTRODUCTION

1. In this *Memorandum Opinion and Order* (“*Order*”), we grant in part and deny in part a petition for reconsideration (“petition”) filed by Mr. Everald Oliver Brown (“Mr. Brown”) on December 6, 2004. Mr. Brown seeks reconsideration of a *Memorandum Opinion and Order (MO&O)*¹ in which the Enforcement Bureau (“Bureau”) denied Mr. Brown’s previous petition for reconsideration of a Bureau *Forfeiture Order*,² which found Mr. Brown liable for a monetary forfeiture in the amount of ten thousand dollars (\$10,000) for willful violation of Section 301 of the Communications Act of 1934, as amended (“Act”).³ The noted violation involves Mr. Brown’s operation of an unlicensed FM broadcast station on the frequency 95.9 MHz in the Orlando, Florida area. For the reasons discussed below, we reduce the forfeiture amount to six hundred dollars (\$600).

II. BACKGROUND

2. On March 31, 2003, the District Director of the Commission’s Tampa, Florida Field Office (“Tampa Office”) issued a *Notice of Apparent Liability for Forfeiture* (“NAL”) in the amount of \$10,000 to Mr. Brown for the apparent willful violation of Section 301 of the Act based on observations by the Tampa Office that Mr. Brown was operating an unlicensed FM broadcast station as referenced above.⁴ Mr. Brown did not file a response to the NAL, and on July 22, 2003, the Bureau released a *Forfeiture Order* finding Mr. Brown liable for a \$10,000 monetary forfeiture for willful violation of Section 301 of the Act. Mr. Brown filed a petition for reconsideration of the *Forfeiture Order* stating that he failed to respond to the NAL because he believed it was a warning notice. In addition, he asserted that he had no prior knowledge of the Commission’s rules and regulations and was unaware that his broadcast

¹ *Everald Oliver Brown*, 19 FCC Rcd 21983 (Enf. Bur. 2004)(“*MO&O*”).

² *Everald Oliver Brown*, 18 FCC Rcd 15188 (Enf. Bur. 2003)(“*Forfeiture Order*”).

³ 47 U.S.C. § 301.

⁴ *Notice of Apparent Liability for Forfeiture*, NAL/Acct. No. 200332700018 (Enf. Bur., Tampa Office, released March 31, 2003).

operations were illegal. Further, Mr. Brown contended that he “neither owned [n]or normally operated” the station. Finally, Mr. Brown indicated that he would provide documentation which would demonstrate his inability to pay the forfeiture amount.

3. The Bureau reviewed Mr. Brown’s petition for reconsideration and found his arguments to be without merit. The Bureau also declined to cancel or reduce the forfeiture amount because Mr. Brown failed to provide financial documentation to support his claim of inability to pay. On November 5, 2004, the Bureau issued a *Memorandum Opinion and Order* denying Mr. Brown’s petition for reconsideration and affirming the *Forfeiture Order*.

4. In his current petition, Mr. Brown does not dispute our finding that he committed the violation referenced above. He does contend, however, that his actions were not willful and that once warned of the violation, he ceased broadcast operations of the station. In addition, Mr. Brown maintains that he “will not ever violate [the] FCC’s rules and regulations again.” He requests cancellation of the forfeiture and has provided documentation to support his claim of financial hardship.

III. DISCUSSION

5. The willfulness of Mr. Brown’s actions was previously discussed in the Bureau’s *MO&O*.⁵ He has raised no new arguments for us to address herein. We also find no reason to cancel the forfeiture based on Mr. Brown’s decision to discontinue the station’s operation.⁶ We have, however, examined the financial documentation submitted with Mr. Brown’s petition and will reconsider the forfeiture amount pursuant to the statutory factors prescribed by Section 503(b) of the Act,⁷ Section 1.80(b)(4) of the Rules,⁸ and *The Commission’s Forfeiture Policy Statement and Amendment of Section 1.80 of the Rules to Incorporate the Forfeiture Guidelines*.⁹ In analyzing a financial hardship claim, the Commission generally has looked to gross revenues as a reasonable and appropriate yardstick in determining whether a licensee is able to pay the assessed forfeiture.¹⁰ While we find that Mr. Brown willfully violated Section 301 of the Act, based upon his inability to pay, we conclude that pursuant to Section 503(b) of the Act and the *Forfeiture Policy Statement* that reduction of the \$10,000 forfeiture to \$600 is warranted.¹¹

⁵ *Everald Oliver Brown*, 19 FCC Rcd at 21984 (the term willful, in the context of violations for which forfeitures are assessed is the conscious and deliberate commission or omission of such act, irrespective of any intent to violate any provision of the Act or any rule or regulation of the Commission).

⁶ *AT&T Wireless Services, Inc.*, 17 FCC Rcd 21866, 21875 (2002); *Seawest Yacht Brokers*, 9 FCC Rcd 6099 (1994) (corrective action taken to comply with the rules is expected, and does not mitigate any prior forfeitures or violations); *Odino Joseph*, 18 FCC Rcd 16522, 16524 (Enf. Bur. 2003) (remedial action taken to terminate unauthorized broadcast operations is not a mitigating factor).

⁷ 47 U.S.C. § 503(b).

⁸ 47 C.F.R. § 1.80(b)(4).

⁹ 12 FCC Rcd 17087 (1997), recon. denied, 15 FCC Rcd 303 (1999) (“*Forfeiture Policy Statement*”).

¹⁰ See *PJB Communications of Virginia, Inc.*, 7 FCC Rcd 2088 (1992).

¹¹ See *Local Long Distance, Inc.*, 16 FCC Rcd at 10025 (forfeiture not deemed excessive where it represented approximately 7.9 percent of the violator’s gross revenues); *Hoosier Broadcasting Corporation*, 15 FCC Rcd 8640, 8641 (Enf. Bur. 2002) (forfeiture not deemed excessive where it represented approximately 7.6 percent of the violator’s gross revenues); *Alpha Ambulance, Inc.*, FCC 04-19, 2, n.15 (February 5, 2004), citing *PJB Communications*, 7 FCC Rcd at 2089 (forfeiture not deemed excessive where it represented approximately 2.02 percent of the violator’s gross revenues).

IV. ORDERING CLAUSES

6. Accordingly, **IT IS ORDERED** that, pursuant to Sections 405¹² of the Act and Sections 1.80(i) and 1.106 of the Rules,¹³ the December 6, 2004 petition for reconsideration filed by Mr. Everald Oliver Brown **IS GRANTED TO THE EXTENT INDICATED HEREIN AND DENIED IN ALL OTHER RESPECTS.**

7. Payment of the forfeiture shall be made in the manner provided for in Section 1.80 of the Rules within 30 days of the release of this *Order*. If the forfeiture is not paid within the period specified, the case may be referred to the Department of Justice for collection pursuant to Section 504(a) of the Act.¹⁴ Payment of the forfeiture must be made by check or similar instrument, payable to the order of the Federal Communications Commission. The payment must include the NAL/Acct. No. and FRN No. referenced above. Payment by check or money order may be mailed to Federal Communications Commission, P.O. Box 358340, Pittsburgh, PA 15251-8340. Payment by overnight mail may be sent to Mellon Bank /LB 358340, 500 Ross Street, Room 1540670, Pittsburgh, PA 15251. Payment by wire transfer may be made to ABA Number 043000261, receiving bank Mellon Bank, and account number 911-6106. Requests for full payment under an installment plan should be sent to: Associate Managing Director – Financial Operations, 445 12th Street, SW, Room 1-A625, Washington, D.C. 20554.¹⁵

8. **IT IS FURTHERED ORDERED** that a copy of this *Order* shall be sent by first class and certified mail, return receipt requested, to the address of record for Mr. Everald Oliver Brown.

FEDERAL COMMUNICATIONS COMMISSION

George R. Dillon
Assistant Bureau Chief
Enforcement Bureau

¹² 47 U.S.C. § 405.

¹³ 47 C.F.R. 1.80(i) and 1.106.

¹⁴ 47 U.S.C. § 504(a).

¹⁵ See 47 C.F.R. § 1.1914.